

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4042 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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GE LIGHTING (INDIA) PVT. LTD - Petitioner(s)
Versus
YOGESH B AMIN - Respondent(s)

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Appearance :

NANAVATI ASSOCIATES for Petitioner No(s).: 1.
MRS SANGEETA N PAHWA for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE M.R. SHAH

Date : 27/06/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner management has challenged the legality and validity of the order passed by the Industrial Tribunal, Nadiad dated 1st March, 2005 passed below Exh.18 passed in Application (INT) No.13 of 2004

Reference (ITN) No.159 of 2001 by which the Industrial Tribunal has allowed the application submitted by the respondent workman by quashing and setting aside the order of dismissal.

2. It appears from the record that there is an industrial dispute being Reference (ITN) No.159 of 2001 and during pendency of the said reference, departmental inquiry was initiated against the respondent workman and after giving an opportunity, order came to be passed dismissing the respondent workman from service. However, in view of pendency of Reference (ITN) No.159 / 2001, necessary approval under Section 33(2) (b) of the Industrial Disputes Act, 1947 was required and therefore, the petitioner had filed approval application under the aforesaid provisions seeking approval of the action of the dismissal of the respondent which was numbered as Application (ITN) No.13 of 2004. In the said application, the respondent workman submitted application Exh.18 for quashing and setting the order of dismissal dated 16.12.2004 as being illegal, unjust and malafide and contrary to the Model Standing Orders. The Industrial Tribunal heard the said application Exh.18 of the workman and held that the order of dismissal is against the Model Standing Orders and accordingly allowed application Exh.18 and the main application of the petitioner company for approval under Section

33(2) (b) of the I.D.Act came to be rejected. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of the India.

3. Shri Keyur Gandhi, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Industrial Tribunal has while allowing the application submitted by the respondent workman and dismissing the approval application submitted by the petitioner company, has gone and traveled beyond the scope of Section-33(2)(b) of the Act and has exceeded in its jurisdiction in going into the merits of the case and the order of dismissal. It is submitted that the Industrial Tribunal has decided the approval application and/or application submitted by the respondent workman as if the Tribunal was deciding the reference under Section-10 of the I.D.Act. Relying on the judgment of the Hon'ble Supreme Court of India in case of CHOLAN ROADWAYS LTD V. G.THIRUGNANASAMBANDAM, AIR 2005 SC 570, more particularly, the observations made by the Hon'ble Supreme Court of India in para-13 that the jurisdiction of the Industrial Tribunal under Section-33(2)(b) cannot be equated with that of Section 10 of the I.D.Act and what is required to be considered by the Industrial Tribunal under Section-33(2)

(b) of the I.D.Act is whether sufficient opportunity has been given to the workman or not and that inquiry is proceeded and conducted after following the principles of natural justice. It is, therefore, submitted that the Industrial Tribunal in the present case ought not to have gone into the legality and validity of the order of dismissal on merits which is otherwise required to be considered in a Reference proceedings referred to under Section-10 of the I.D.Act. It is also further submitted that even there is finding of fact given by the Industrial Tribunal that the misconduct of habitual absentism without leave amounts to misconduct as contemplated under Clause-24 of the Model Standing Orders, the Tribunal ought not to have set aside the dismissal order and/or approval application which was filed for approving their action to dismiss the respondent workman. It is also further submitted that under the provisions of Section-33(2)(b) of the I.D.Act, only thing which is required to be seen is whether there is prima facie case made out or not. It is also further submitted that in fact, there is no decision taken by the Industrial Tribunal on the approval application submitted by the petitioner and while allowing the application Exh.18 submitted by the respondent workman, in which, the order of dismissal was challenged on the ground that the same is contrary to the Model Standing Orders, the Tribunal has dismissed the approval application without deciding the same and

therefore, it is requested to allow the present special civil application.

4. On the other hand, Smt.Sangeeta Pahwa, learned advocate appearing on behalf of the respondent workman has submitted that exercise of powers by the Industrial Tribunal holding that dismissal order is contrary to the Model Standing Orders is just and proper in the facts and circumstances of the case. It is submitted that whether the dismissal order itself is valid or not goes to the root of the case and when it is found that the action of the petitioner in dismissing the respondent workman from service was not in consonance with the Model Standing Orders, the Tribunal has rightly allowed the application submitted by the respondent workman and rejecting the approval application submitted by the petitioner. Under the circumstances, it is requested to dismiss the present special civil application.

5. It is required to be noted that the Tribunal was exercising the powers under Section 33(2)(b) of the I.D.Act and was considering the approval application submitted by the petitioner management. Fact remains that the Industrial Tribunal was not deciding the Reference under Section – 10 of the I.D.Act challenging the order of termination and / or dismissal. As held by the Hon'ble Supreme Court of India in

case of CHOLAN ROADWAYS LTD (SUPRA), the scope of the powers under Section 33 (2)(b) of the I.D.Act is different than that of Section-10 of the Act and that jurisdiction of the Industrial Tribunal under Section-33(2)(b) of the Act cannot be equated with that of Section-10 of the I.D.Act. What was required to be considered by the Industrial Tribunal while considering the approval application under Section-33-(2)(b) was whether enough and sufficient opportunity was given to the respondent workman or not and, whether inquiry was after following the principles of natural justice or not and was required to consider whether there is prima facie case made out or not. The Tribunal was not required to consider the order of dismissal on merits as if deciding the reference under Section-10 of the I.D.Act. Under the circumstances, the impugned order passed by the Industrial Tribunal allowing the application Exh.18 and rejecting the approval application submitted by the petitioner management on the ground that dismissal order itself is contrary to the Model Standing Orders, requires to be quashed and set aside. By dismissing the approval application while application Exh.18 submitted by the respondent workman, in which, the respondent workman has challenged the legality and validity of the dismissal order, the Tribunal has exceeded in its jurisdiction and therefore, the same requires to be quashed and set aside. It also appears that the Tribunal has not

independently considered the approval application and while allowing the application below Exh.18 submitted by the respondent workman dismissed the approval application and therefore, while quashing and setting the impugned order passed by the Industrial Tribunal, the matter is remanded to the Industrial Tribunal for deciding the approval application afresh in accordance with law considering the observations made hereinabove.

6. For the reasons stated above, the present petition succeeds and the impugned order passed by the Industrial Tribunal dated 1st March, 2005 passed below Exh.18 passed below Application (ITN) No.13/ 2004 in Reference (ITN) No.159 / 2001 is hereby quashed and set aside and the matter is remanded to the Industrial Tribunal, Nadiad for deciding the approval application submitted by the petitioner management afresh and in light of the observations hereinabove.

Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R.Shah, J.]

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